

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff

vs.

Case No.12-cr-115-CVE

WESLEY SCOTT McGINNESS

Defendant(s).

FILED

AUG 02 2012

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PETITION TO ENTER PLEA OF GUILTY

AND

ORDER ENTERING PLEA

(Federal Rules of Criminal Procedure, Rules 10 and 11)

The defendant represents to the Court:

My full true name is: Wesley Scott McGinness.

I am 65 years of age. I have gone to school up to and including 2 years college at Wentworth Military Academy.

I request that all proceedings against me be in my true name.

I am represented by an attorney; his/her name is: Mark D. Lyons, OBA #5590.

I received a copy of the Indictment/Information (**circle the appropriate title**) before being called upon to plead. I read the Indictment/Information and have discussed it with my attorney. I fully understand every charge made against me.

I told my attorney all the facts and circumstances known to me about the charges made against me in the Indictment/Information. I believe that my attorney is fully informed on all such matters.

My attorney has counseled and advised me on the nature of each charge, on all lesser included charges, and on all possible defenses that I might have in this case.

WAIVER OF CONSTITUTIONAL RIGHTS

I know that I have the right to plead "NOT GUILTY" to any offense charged against me. If I plead "NOT GUILTY", I know the Constitution guarantees me (a) the right to a speedy and public trial by a jury; (b) at that trial, and at all stages of the proceedings, the right to the assistance of an attorney; (c) the right to see and hear all witnesses called to testify against me, and the right to cross-examine those witnesses; (d) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor; and (e) the right not to be compelled to incriminate myself by taking the witness stand; and if I do not take the witness

stand, no inference of guilt may be drawn from such failure.

In regard to my right to a jury trial, I know that I am the only person that can waive, that is, give up, that right. I also fully understand that if I have trial by a jury, I have the right of the assistance of an attorney; also the right to confront and cross-examine witnesses against me; and the right not to be compelled to incriminate myself. Furthermore, I understand that to convict me, all twelve (12) jury members would have to agree that I am "GUILTY".

I know that if I plead "GUILTY" I am thereby waiving my right to a trial, and that there will be no further trial of any kind, either before a Court or jury; and further, I realize the Court may impose the same punishment as if I had pleaded "NOT GUILTY", stood trial, and been convicted by a jury.

I further understand that my waiver of Sixth Amendment rights to a jury is a waiver of trial by jury in all respects, both as to guilt or innocence and as to sentencing, and I consent that all matters in these proceedings be determined by the Court in accordance with Rule 23 of the Federal Rules of Criminal Procedure.

PLEA OF GUILTY

I know that if I plead "GUILTY" the Court will ask me questions about the offense(s) to which I have pleaded, and since I will be answering these questions under oath, on the record, and in the presence of my attorney, that my answers may later be used against me in a prosecution for perjury or false statement.

I know that the Court must be satisfied that there is a factual basis for a plea of "GUILTY" before my plea can be accepted. I represent to the Court that I did the following acts in connection with the charge(s) made against me in Count(s)

See Plea Agreement and Plea Agreement attachment submitted as Exhibit 1.

(in the above space defendant must set out in detail what (s)he did. If more space is needed, add a separate page.)

In deciding to enter my plea of guilty I rely upon the following advice from my attorney.
(List any and all advice or recommendations by your attorney upon which you rely in entering your plea of guilty).

None.

I also inform the Court that I am not relying in entering my plea(s) of Guilty, on any representation from my attorney or from the Government or any other source that has not been revealed to the Court and made a part of this record.

By pleading guilty I understand I waive, that is, give up all pretrial motions, and can not assert any such motions before the Court or on appeal after pleading guilty.

I also understand a conditional plea pursuant to Rules of Criminal Procedure, Rule 11(a)(2) can only be entered WITH THE APPROVAL OF THE COURT and the GOVERNMENT reserving IN WRITING the right, on appeal from the judgment, to review of any adverse determination of any pretrial motions. The writing must be presented in open court and made part of the record.

I know that the Court will not permit anyone to plead "GUILTY" who maintains he is innocent and, with that in mind, and because I am "GUILTY" and do not believe I am innocent, I wish to plead "GUILTY" respectfully request the Court to accept my plea of "GUILTY" and to have the Clerk enter my plea of "GUILTY" as follows:

Guilty to Counts I and II as alleged in the information.

Note: The defendant's plea of "GUILTY" or "NOT GUILTY" to each offense should be entered in the blank space provided above. If the Indictment/Information charges a single offense, a defendant who wishes to plead "GUILTY" should write in the above space "GUILTY as charged in the Indictment/Information". If more than one offense is charged, the defendant may write in the space above "GUILTY as charged in Count(s) _____", "NOT GUILTY as charged in Count(s) _____".

MANDATORY MINIMUM SENTENCE

I have been informed and understand a plea of guilty may subject me to a minimum sentence of prison and/or fine.

MAXIMUM SENTENCE REQUIRED UNDER LAW

My attorney informed me that the plea of "GUILTY" could subject me to a maximum punishment, which, as provided by law is 20 years imprisonment and/or a fine of \$250,000.00 or 2 times the loss. My attorney has further advised me that if the offense(s) to which I plead "GUILTY" occurred on or after January 1, 1985, the maximum fine is the largest of:

*WDL
GWL
8/2/12*
as to count 1; and up to 3 years imprisonment
and/or a fine of \$250,000 or 2 times the loss.
as to count 2.

- (a) The amount specified in law defining the offense
- (b) Double the gross pecuniary gain derived by a defendant from the offense
- (c) Double the pecuniary loss caused by the offense to another person

	<u>Individual Defendant</u>	<u>Other Defendant</u>
(d) Any Felony; Misdemeanor resulting in Death	\$250,000	\$500,000
Other Misdemeanor punishable by more than six months	100,000	200,000

My attorney has also advised me that a Special Monetary Assessment in the amount of \$100.00 will be assessed per count if the offense(s) occurred on or after November 12, 1984.

Further, my attorney has advised me that if the offense(s) to which I plead "GUILTY" occurred after December 31, 1982, and the offense(s) charge violation(s) of any statute found under Title 18 of the United States Code or certain subsections of the Federal Aviation Act (Title 49 U.S.C. 1472), that Title 18 U.S.C. et seq. authorizes a court to sentence a defendant to pay restitution in addition to or in lieu of any other penalty permitted by law, to any victim of the offense(s).

Also, if convicted of certain drug offense(s) under Title 21, an additional term of in addition to imprisonment, a term of supervised release years ~~Special Parole~~/Supervised Release must be imposed. *release of not to exceed 3 yrs may be imposed as to ct 1 and 1 yr as to ct 2.*

PLEA AGREEMENT

My plea of "GUILTY" (is) (is not) (**circle the appropriate response**) the result of a plea agreement entered into between the government attorney, my attorney, and me.

Since my plea of "GUILTY" is the result of a plea agreement, I hereby state that the terms of said agreement are as follows:

See plea agreement attached hereto as Exhibit 1.

I fully understand that the Court is not bound by the terms of the plea agreement, and may accept or reject said agreement. If the Court rejects the agreement, I also understand the Court will give me the opportunity to withdraw my plea of "GUILTY".

I believe that my attorney has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME.

STATE OF MIND

My mind is clear. I am not under the influence of alcohol or drugs, and I am not under a doctor's care. The only drugs, medicine or pills that I took within the past seven (7) days are:
(If none, so state)

- 1) I am on Oxygen 24 hours/day.
- 2) Brovana (nebulizer medication for my lungs) 2x/day.
- 3) Itrpropium Bromide/Albuteral sulfate (nebulizer medication for my lungs) 4x/day.
- 4) Spiriva tablet for hand inhaler 1x/day.
- 5) Proair (inhaler) 3-4x/day as needed.
- 6) Fludicasonepropionate (nasal spray) 2x/day.

I have never been confined in any institution for the treatment of mental illness. I have never been adjudicated mentally incompetent. No psychiatrist, physician or psychologist has ever found me to be mentally ill. I know of no reason why my mental competence at the time of the commission of the alleged offense(s), or at the present time, should be questioned. (If there are any exceptions to the above statement, explain here.)

I was in treatment at HOW Foundation for 20 years for alcohol addiction. In 1975 I went to Valley Hope in Atchison, Kansas for alcohol rehabilitation. In about 1988, I was treated in-patient at St. John's Hospital in Tulsa, Oklahoma for alcohol addiction.

I offer my plea of "GUILTY" freely and voluntarily, and further state that my plea of "GUILTY" is not the result of any force or threats against me, or of any promises made to me other than those noted in this petition. I further offer my plea of "GUILTY" with full understanding of all the matters set forth in the Indictment/Information and in this petition, and in the certificate of my attorney which is attached to this petition.

SENTENCING

I have been advised by counsel that I will be sentenced pursuant to the sentencing guidelines procedure established by Title 18 U.S.C. §3553 et seq. I understand that sentencing is a matter left exclusively in the province of the Court; and I understand that the sentence imposed by the Court may be within the guideline table range provided by law, or for good cause stated the Court may depart therefrom after a review of all relevant facts and circumstances of my case have been considered by the Court.

I further understand the Court may impose a term of Supervised Release that will run after any term of confinement that might be imposed.

Further, I understand that probation is not available as a sentencing alternative to the Court

in most cases under the sentencing guidelines, and that whenever probation is permissible under the sentencing guidelines it is exclusively within the Court's province to grant or deny probation.

If I am on probation or parole in this or any other Court, I know that by pleading "GUILTY" here, my probation or parole may be revoked and I may be required to serve time in that case, which may be consecutive, that is, in addition to any sentence imposed on me in this case.

I declare that no officer or agent of any branch of government (Federal, State, or local) has promised, suggested or predicted that I will receive a lighter sentence, or probation, or any other form of lenience if I plead "GUILTY", except as follows:

(Here insert any promises or concessions made to the defendant or to his attorney. If the plea of "GUILTY" is the result of a plea agreement, refer to paragraph _____ of this petition.)

None.

If anyone else, including my attorney, made such a promise, suggestion, or prediction, except as noted in the previous sentence, I know that he had no authority to do so.

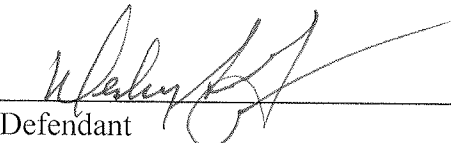
I know that the sentence I will receive is solely a matter within the control of the Judge. I hope to receive lenience, but I am prepared to accept any punishment permitted by law which the Court sees fit to impose. However, I respectfully request the Court to consider, in mitigation of punishment, that I have voluntarily entered a plea of "GUILTY".

I have been advised and do understand that I have the right of appeal of any sentence imposed by the Court to the 10th Circuit Court of Appeals. Also, that any appeal must be filed no more than 14 days from date of sentence.

I waive the reading of the Indictment/Information in open Court, and I request the Court to enter my plea of "GUILTY" as set forth in this petition.

I swear that I have read, understood, and discussed with my attorney, each and every part of this Petition to Plead Guilty, and that the answers which appear in every part of this petition are true and correct.

Signed and Sworn to by me in open Court, in the presence of my attorney, this 2nd day of AUGUST, 2012.


Defendant

Subscribed and Sworn to before me this 2nd day of August, 2012.


Deputy Clerk

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counselor for the defendant Wesley Scott McGinness, hereby certifies:

(1) I have read and fully explained to the defendant the allegations contained in the Indictment/Information* in this case.

(2) To the best of my knowledge and belief, the statements, representations and declarations made by the defendant in the foregoing petition are in all respects accurate and true.

I have further explained to my client the provisions of guideline sentencing as established by Title 18 U.S.C. 3553 et seq. Although I have discussed with my client the maximum sentence imposed for the offense for which (s)he is charged, I have not promised, suggested or predicted a possible sentence. I have specifically advised my client that sentencing is left solely within the province of the Court.

My client fully understands that for good cause shown, the Court may depart from the guideline table range and further that probation is not available as a sentencing alternative in most cases under guideline sentencing. Also, my client fully understands that whenever probation is a permissible sentencing alternative, it is exclusively within the Court's discretion to grant or deny probation.

(3) The plea of "GUILTY" offered by the defendant accords with my understanding of the facts (s)he related to me and is consistent with my advice to the defendant.

(4) In my opinion, the defendant's waiver of reading of the Indictment/Information in open Court as provided in Rule 10 is voluntarily and understandingly made, and I recommend to the Court that the waiver be accepted by the Court.

(5) In my opinion, the plea of "GUILTY" offered by the defendant of the petition is voluntarily and understandingly made. I recommend that the Court accept the plea of "GUILTY".

(6) I have made no predictions or promises to the defendant concerning any sentence the Court may award, except as noted in the space below:

None.

(7) I further represent to the Court that the defendant's plea of "GUILTY" (is) (is not) the result of a plea agreement. The terms of the agreement are set out in the petition, and I have informed the defendant that the Court is not bound by the terms of the agreement, and that if the Court rejects the agreement, the Court will give him/her the opportunity to withdraw his/her plea of "GUILTY".

Signed by me in open Court in the presence of the defendant above named and after full discussion of the contents of this certificate with the defendant, this 2nd day of August, 2012.



Attorney for the Defendant OBA 5590

ORDER

I find that the plea of "GUILTY" was made by the defendant freely, voluntarily, and because (s)he is "GUILTY" as charged, and not out of ignorance, fear, inadvertence or coercion, and with full understanding of its consequences. I further find that the defendant has admitted the essential elements of the crime(s) charged and that there is a factual basis for the pleas(s) of "GUILTY" and the defendant is mentally competent.

IT IS THEREFORE ORDERED that the defendant's plea(s) of "GUILTY" be accepted and entered as prayed for in the petition and as recommended in the certificate of his/her attorney.

Done in open Court this 2nd day of August, 2012.



UNITED STATES DISTRICT JUDGE